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March 3, 2019

BY ECF

Hon. A. Kathleen Tomlinson, U.S.M.J.  
United States District Court, E.D.N.Y.  
100 Federal Plaza  
P.O. Box 9014  
Central Islip, New York 11722-9014

Re: *Craig Cunningham v. Shore Funding Solutions Inc.*,  
Case No. 17-CV-2080 (ADS)(AKT)

Your Honor:

I represent Plaintiff Craig Cunningham and the putative class ("Plaintiff") in the above-entitled matter. I am writing this letter to respond to the March 1, 2019 letter of Defendant's counsel, Mr. Clifford Olshaker, requesting that this Court adjourn the currently scheduled March 7, 2019 hearing on Plaintiff's fourth and fifth motions to compel discovery, impose sanctions and for other relief. Despite having known of the March 7, 2019 hearing date since January 23, 2019, the date this Court scheduled the hearing, Mr. Olshaker now claims, for the first time, that he has a 1:30 P.M. flight to Amsterdam scheduled for March 7, and therefore cannot appear. Accordingly, Mr. Olshaker and Defendant have requested an adjournment of the March 7, hearing. Plaintiff strenuously opposes Mr. Olshaker's and Defendant's request for an adjournment.

As this Court is well aware, Plaintiff has been forced to file five motions to compel discovery in this case because of Mr. Olshaker's and Defendant's contumacious and repeated refusal to follow this Court's discovery orders and fulfill their discovery obligations. Mr. Olshaker's and his client's contumacious discovery behavior has not been limited to this case, but has been repeated in at least two other cases, one of which is pending before Your Honor. *Usher v. Shore Funding Solutions, Inc.*, 1:17 cv 01869 (E.D.N.Y.) (ADS-AKT); *Abante Rooter and Plumbing, Inc.* 2:17 cv 1869 (E.D.N.Y.) (SJ-RML). In *Usher*, the plaintiff's counsel submitted detailed memoranda of law to his Court describing Mr. Olshaker's and Shore Funding's contumacious discovery behavior in that case, in *Abante Rooter*, and in this case. *Usher*, Doc. Nos. 17-1, 23.

Moreover, Mr. Olshaker and Defendant have failed to file any opposition to Plaintiff's fourth and fifth motions to compel, impose sanctions, and for other relief. In addition, Plaintiff's fourth and fifth motions to compel, impose sanctions, and for other relief have been pending

since June, 2018, and Mr. Olshaker has been aware since January 23, 2019 that the hearing on these motions is scheduled for March 7, 2019. Nevertheless, Mr. Olshaker waited until March 1, 2019, after Plaintiff sent him an e-mail and text reminding Mr. Olshaker that the hearing on the motions was scheduled for March 7, 2019, to inform the Court and Plaintiff's counsel that he had a 1:30 p.m. flight on March 7, 2019 to Amsterdam, and therefore needed an adjournment. This is simply another example of Mr. Olshaker's repeated failures to follow court orders and take court deadlines and schedules seriously. This Court should not countenance such behavior.

Especially in light of Mr. Olshaker's and Defendant's failure to file any opposition to Plaintiff's June, 2018 motions, this Court should grant Plaintiffs motions in full without any hearing. In the alternative, this Court should move forward with the long-scheduled hearing on March 7, 2019 with or without Mr. Olshaker's presence. Plaintiff wishes to note that Plaintiff has researched the March 7, 2019 flights to Amsterdam from the New York area airports and found numerous flights scheduled for the late afternoon and evening which still have tickets available. Therefore, Mr. Olshaker has every opportunity to fulfill his obligation to appear for the hearing and still travel to Amsterdam on March 7.

In sum, given the irresponsible behavior of Mr. Olshaker and Defendant in this and other cases, the length of time Plaintiff's motions have been pending, and Mr. Olshaker's and Defendant's failure to file any opposition to Plaintiffs pending motions, this Court should deny Mr. Olshaker's and Defendant's request for an adjournment.

Respectfully submitted,

/s/ Aytan Y. Bellin

cc: Clifford B. Olshaker, Esq. (By ECF)

**CERTIFICATE OF SERVICE**

I hereby certify that on March 3, 2019, I caused the foregoing to be electronically filed with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the email addresses denoted on the Electronic Mail Notice List.

s/Aytan Y. Bellin

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